

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
WESTERN DIVISION

Nicholas Meyer,)	
)	
Plaintiff,)	Civil No. 1:16-cv-00365
)	
vs.)	RESPONSE IN OPPOSITION TO
)	DEFENDANT MCKENZIE ELECTRIC'S
McKenzie Electric Cooperative, Inc.,)	MOTION FOR COSTS AND STATEMENT
)	OF COSTS
Defendant/Third-Party Plaintiff,)	
)	
vs.)	
)	
4T Construction, Inc.,)	
)	
Third-Party Defendant.)	

Defendant McKenzie Electric Cooperative, Inc., has filed a claim for costs in this matter.

Plaintiff alleges this claim is insufficient for the following reasons:

D.N.D. Rule 54.1(A)(1) requires any party seeking costs to file a verified claim for said costs.

In the present case, the attorneys have failed to do so. The Rule specifically states,

The applicant's attorney must verify the statement of costs by affirming that the items are correct, the services were actually and necessarily performed, and the disbursements were necessarily incurred. A party's failure to comply with the foregoing procedures may be deemed a waiver of any or all of the claim for costs.

(emphasis supplied).

Verification, as defined by Thomson Reuters (Federal) Practical Law, is:

A written statement in which a party attests under oath to the truth and accuracy of its submission, such as answers to interrogatories or a complaint. A verification:

- Usually appears on a separate page, which is then attached to the party's submission.
- Is signed by the verifying party.
- Appears in the form of either a party's:
 - sworn and notarized statement; or

- unsworn declaration, executed under the penalty of perjury (see 28 *U.S.C. § 1746*).

It is clear counsel for Defendant has failed to properly verify the Statement of Costs in this matter, as they did not indicate in their statement that the services were actually and necessarily performed. Defense counsel merely signed in front of a notary, but did not include a verification statement in his Statement of Costs. As a result, this has waived their claim for costs.

The costs in this case are not really those of Defendant McKenzie Electric Cooperative, Inc. This Court, in a prior decision [Dkt.#45], ruled Defendant McKenzie Electric Cooperative, Inc., was entitled to indemnification from Defendant 4T Construction, Inc., for any monies expended on this file. As a result, these costs should be requested from Third-Party Defendant 4T Construction, Inc.

WHEREFORE, Plaintiff respectfully requests Defendant McKenzie Electric Cooperative, Inc.'s requests for costs in this matter be denied.

DATED this 24th day of October, 2018.

LARSON LAW FIRM, P.C.

/s/ Mark V. Larson

Mark V. Larson (ID#03587)

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